SINGLE BENCH

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 5427 /2005

PETITIONER : Ramkumar Pradhan
S/o. Shri Rama Rao Pradhan
Secretary Gram Panchayat Kathotia (Since removed) R/o. Kathotia, Janpad Panchayat Lormi Distt.Bilaspur (C.G.)

VERSUS

RESPONDENTS: 1] State of Chhattisgarh,
Through-Director Panchayat
Directorate Panchayat & Social services
Chhattisgarh- Raipur

2] Chief Executive Officer
Janpad Panchayat Lormi Distt- Bilaspur

3] Joint Director
Panchayat & Social welfare, Bilaspur

4] Sarpanch, Gram Panchayat, Kathotia
Janpad Panchayat LORMI
Distt- Bilaspur (C.G.)

5483/05 Awadhesh Das dated 20/10/05

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WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 5427 of 2005

Petitioner Ramkumar Pradhan

Versus

Respondents State of Chhattisgarh & others

Post for order on 18th September, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 5427 of 2005

Petitioner : Ramkumar Pradhan

Versus

Respondents : State of Chhattisgarh & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri Ashok Vaishnav, Advocate for the Petitioner.

Shri Satish Gupta, Government Advocate for the respondents No. 1 and 3.

Shri Sandeep Dubey, Advocate for the respondents No. 2 and 4.

ORDER

(Passed on 18th September, 2006)

1. The petitioner was appointed as Panchayat Karmi/Secretary in the Gram Panchayat, Kathotia, Janpad Panchayat - Lormi, District-Bilaspur. He has filed this petition under Article 226/227 of the Constitution of India, impugning the order 23.4.2005 (Annexure P/1), whereby the services of the petitioner as Panchayat Karmi was terminated in accordance with the resolution passed in the meeting of the Gram Panchayat dated 12.4.2005, which was approved by the Gram Sabha in its meetings dated 14th, 16th and 19th April, 2005 ; the order dated 2.5.2005 (Annexure P/2), whereby the appointment of the petitioner as Secretary of the Gram Panchayat Kathotia made under Section 69(1) of the Chhattisgarh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 was terminated, and the order dated 4.10.2005 (Annexure P/4),

whereby and whereunder the order passed by the Sarpanch, removing the petitioner from the post of Panchayat Karmi and consequently the order, removing from the post of the Secretary of the Gram Panchayat from the petitioner, was upheld by the appellate authority/respondent No.1.

2. The facts in nutshell are that the petitioner was appointed as Panchayat Karmi and thereafter Secretary. On the ground of several irregularities alleged to have been committed by the petitioner, he was removed from the post of Panchayat Karmi vide order dated 23.4.2005 (Annexure P/1) passed by the respondent No.4 on the basis of the resolution passed in the meeting dated 12.4.2005, approved by the Gram Sabha in its meetings dated 14.4.2005, 16.4.2005 and 19.4.2005. Consequently, the petitioner was removed from the post of Secretary vide order dated 2.5.2005 (Annexure P/2) passed by the respondent No.3.

3. In revision, the respondent No.1 vide order dated 4.10.2005 upheld the order passed by the Sarpanch, removing the petitioner from the post of Panchayat Karmi, thereafter, the removal of the petitioner as Secretary by order dated 2.5.2005 and dismissed the revision accordingly.

4. The petitioner has filed this petition on the grounds that before order of removal was passed by the respondent No.4 on 23.4.2005, no show cause notice was served on the petitioner and also a departmental enquiry as envisaged in Rule 7 of the Madhya Pradesh

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Panchayat Service (Discipline and Appeal) Rules, 1999 (for short 'the Rules, 1999') was not conducted. Hence the removal of the petitioner from the post of Panchayat Karmi on the basis of the resolution alone passed by the Gram Panchayat and thereafter approved by the Gram Sabha is vitiated and consequently, the order dated 2.5.2005 removing the petitioner from the post of Secretary was also vitiated as the removal of the petitioner as Panchayat Karmi itself was bad and contrary to provisions of law by not following the procedure as laid down in Rule 7 of the Rules, 1999.

5. Shri Ashok Das Vaishnav, learned counsel appearing for the petitioner submitted as stated above. It was further contended by him that the alleged allegations against the petitioner cannot be held as proved without conducting even formal enquiry under the provisions of Rule 7 of the Rules, 1999 before imposing major penalty of removal of the petitioner from the services as Panchayat Karmi of the Gram Panchayat as prescribed in Rule 5 of the Rules, 1999.

6. On the contrary, Shri Sandeep Dubey, learned counsel appearing for the respondents No. 2 and 4 submitted that a proper show cause notice was issued and served on the petitioner on 4.4.2005. The petitioner refused to take the notice. Accordingly, the said notice was pasted at his residence in presence of three panchas (Annexure R-4/2). It was further submitted that the said show

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cause notice contained definite charges on the basis of allegations along with statement of allegations. Thus, the petitioner cannot contend that the show cause notice was not served upon him. The petitioner himself refused to accept the show cause notice and thereafter did not participate in the proposed enquiry.

7. The Sarpanch, after having gone through the materials available, came to the conclusion that the petitioner was guilty of the charges of irregularities, and accordingly, the Gram Panchayat resolved to remove the petitioner from the post of Panchayat Karmi.

8. Having heard learned counsel for the parties and having perused the pleadings and documents appended to the petition as also to the return, it is found that the petitioner was served with a charge sheet containing as many as 9 charges of irregularities committed by him. Some of the charges are that sham ration cards were issued to five persons and five persons were not paid social security pension. It was also found that notice was refused by the petitioner on 4.4.2005, thereafter, it was pasted on the wall of the residence of the petitioner in presence of the panchas namely Churavan, Itwari and Sonsingh. It was further found that all the charges were discussed at length and on the basis of records available the said charges were found proved. Accordingly, the Gram Panchayat in its meting dated 12.4.2005 resolved to remove the petitioner from the post of Panchayat Karmi which was

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thereafter approved by the general body of the Gram Sabha in its meetings dated 14.4.2005, 16.4.2005 and 19.4.2005. Subsequent order dated 2.5.2005 was also passed on the basis of the order dated 23.4.2005 as the petitioner could not continue to work as Secretary after removal of his services as Panchayat Karmi.

9. In view of the above stated facts, the contention of learned counsel for the petitioner is misplaced and not sustainable in law. Proper procedure, as prescribed under rule 7 of the Rules, 1999 was followed in the present case.

10. The Hon'ble Supreme Court in the case of **Syndicate Bank Vs. General Secretary, Syndicate Bank Staff Association and another** {(2000) 5 SCC 65} observed in para 17, as under:-

> "17. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural justice which are: (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, e.g., a party must have due notice when the tribunal will proceed; the tribunal should not act on irrelevant evidence or shut out relevant evidence; if the tribunal consists of several members they all must sit together at all times; the tribunal should act independently and should not be biased against any party; its action should be based on good faith and order (sic) and should act in a just, fair and reasonable manner.

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These in fact are the extensions or refinements of the main principles of natural justice stated above."

11. The Hon'ble Supreme Court in the case of **Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College and others** {(2004) 1 SCC 281} has observed in para 7, as under:-

"7..... Ample opportunity was granted to the appellant to place his case. He did not choose to do so. It is only a person who is ready and willing to avail of the opportunity given, who can make a grievance about denial of any opportunity and not a person like the appellant who despite repeated opportunities given and indulgence shown exhibited defiance and total indifference to extending cooperation....."

12. In another case of **D. Vinod Shivappa Vs. Nanda Belliappa** { JT 2006 (II) SC 187 }, the Hon'ble Supreme Court after considering the question of service of notice under Clause (c) of the proviso to Section 130-A of the Negotiable Instruments Act, 1881 held in paragraphs 14 and 21, as under:-

"14. If a notice is issued and served upon the drawer of the cheque, no controversy arises. Similarly if the notice is refused by the addressee, it may be presumed to have been served. This is also not disputed....."

"21..... It is no doubt true that the receipt of the notice has to be proved, but as held by this Court consistently, refusal of notice amounts to service of notice....."

13. The reliance of learned counsel for the petitioner on provisions of Rule 7 of the Rules, 1999 and thereafter on various orders passed by this Court in the cases of Prakash Chand Soni Vs. State of Chhattisgarh {2005 LT (CG) 151} and Kunjan Singh Vs. State of

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M.P. and others {2003 (3) M.P.H.T. 370}, are of no assistance to the petitioner, as this is not a case where the show cause notice, containing charges and allegations was not issued and the employer/Panchayat proceeded to remove the service of the employee/Panchayat Karmi(Secretary) on the basis of the resolution alone passed by the Gram Panchayat.

14. In the present petition the petitioner was served with show cause notice containing charges and statements of allegations. The petitioner refused to accept the notice and thus to participate in the proposed enquiry.

15. As a result and for the aforesaid reasons, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur